Appendix A

Dec. 20, 1955

U. S. Department of Justice
Board of Immigration Appeals

File: A-5524011—San Francisco

In re: Jew Ten aka George K. Jue (Jue Gar King)

In Deportation Proceedings

In Behalf of Respondent: A. J. Zirpoli, Esq.
300 Montgomery Street
San Francisco, California

Charges:

Warrant: I & N Act—knowingly and for gain aided aliens to enter the United States in violation of law.

Lodged: None.

Application: That the case be remanded for a hearing de novo.

Detention Status: Released under $4,000 bond.

The respondent, a native and citizen of China, male, married, 46 years of age, appeals from an order entered by the special inquiry officer, July 18, 1955, directing his deportation on the charge stated in the warrant of arrest. Counsel in his exceptions to the order urges errors in the conduct of the proceedings in that "the findings and conclusion of law of the special inquiry officer resulted from the arbitrary abuse of discretion in the admission of a voluminous record of evidence, both oral and documentary, which

was clearly hearsay and of such character as to completely deny the alien the privilege of cross examination and a fair hearing."

The facts of the case have been fully set forth in the opinion of the special inquiry officer and need not be reiterated in their entirety. They establish that respondent originally entered the United States at the port of San Francisco, California on July 3, 1919 and was admitted as the son of a domiciled merchant. Subsequent to his original entry respondent has made numerous trips to China between 1925 and 1950. He also departed on several short trips to Mexico during World War II. Respondent last entered at the port of Honolulu, T.H. on August 10, 1950 and was admitted as a lawful returning resident alien in possession of a valid reentry permit.

The deportation of the respondent is sought under Section 241(a)(13) of the Immigration and Nationality Act of 1952 in that prior to or at the time of any entry, he knowingly and for gain encouraged, induced, assisted, abetted or aided any other alien to enter or try to enter the United States in violation of law. The record shows that respondent was convicted February 15, 1954 in the District Court of the United States for the Northern District of California, S.D. on an indictment charging in a single count that he violated Title 18 U.S.C. (Rev.) Section 371 in that he did, inter alia, knowingly conspire with divers other persons "to defraud the United States (a) of and concerning its governmental function and right of administering the immigration laws of the United

States and regulations promulgated pursuant thereto, particularly those laws and regulations governing the admission, exclusion, and registration of aliens, and their stay in the United States. . . ." (p. 3 of Ex. 115). He was sentenced to imprisonment for a period of one year and one day with a recommendation to the Attorney General that "the defendant be not deported" (Ex. 179). Under the provisions of Section 241(a)(18)(b)(2) of the Immigration and Nationality Act of 1952 a nondeportable status created by judicial recommendation is limited to deportation charges brought under Section 241(a)(4) of the same Act unless said recommendation is preserved by Section 405(a), the savings clause of the 1952 Act. *Matter of W. M.*, Int. Dec. 694, BIA, May 5, 1955. Since Section 405(a) (supra) is not applicable to the instant proceeding the judicial recommendation does not vitiate a charge laid under Section 241(a)(13) of the 1952 Act.

The substance of the case against respondent concerns his activities during May, June, July and the early part of August 1950 in connection with the operation of the China National Travel Agency of San Francisco, California with a branch office at Hong Kong, British Crown Colony. During this period the Government contends that respondent did obtain considerable monetary or other consideration in return for encouraging, inducing, assisting, abetting, or aiding other aliens to unlawfully enter the United States. As proof of the alleged unlawful acts the government relies on a transcript developed during respondent's

trial on the indictment referred to above (Exs. 4, 5 and 114), the testimony of several Chinese aliens and some 182 exhibits consisting of visa files, affidavits and other evidentiary material.

The extent of proof required to support the charge laid under Section 241(a)(13) is materially lessened by reason of respondent's conviction in the United States District Court for the Northern District of California, for violation of Title 18 U.S.C. (Rev.) Section 271. As a part of the conspiracy set forth in the indictment Specification No. 12 charges that certain named co-conspirators and other aliens whose names are to the grand jurors unknown "aided, abetted and assisted by defendant, (respondent herein) would when applying for admission to the United States evade and attempt to evade the immigration laws of the United States by appearing in Hong Kong before said Foreign Service, and in the United States before said Immigration and Naturalization Service under assumed and fictitious names, and by personating the identity of individuals other than said co-conspirators and aliens aforesaid". (See Specification No. 12, p. 7 of indictment entered as Exhibit 115). Specifications 13 through 17 are of the same tenor. Under the circumstances the additional proof required to sustain the charge laid under Section 241(a)(13) (supra) is an affirmative showing that the unlawful activity on the part of respondent as recited in the indictment was entered into "knowingly and for gain".

Respondent operated a travel agency at San Francisco, California beginning March 1948 (Ex. 181) to

at least early in 1951 (Ex. 116—LL). The record affirmatively establishes that during this period respondent had agreements with certain airlines for the sale of international and domestic transportation. The record shows that tickets purchased for aliens in Hong Kong through the China National Travel Agency via the Philippine Air Lines were issued pursuant to orders signed by the respondent. The evidence clearly establishes that these were transactions handled individually by respondent and is proven by the record of his transactions with the Philippine Air Lines. (Exs. 116 mm to uu). The evidence in our judgment establishes without doubt that during the period May to the early part of August 1950 the respondent knew that the activities in which he was engaged in connection with certain aliens desiring to come to the United States were in violation of the laws of the United States concerning the proper governmental function and administration of the United States Department of State and the Immigration and Naturalization Service.

The remaining question to be determined is whether a preponderance of the evidence establishes that respondent did obtain a monetary or other valuable consideration in return for knowingly encouraging, inducing, assisting, abetting or aiding other aliens to unlawfully enter the United States. The testimony of the aliens referred to in the stipulation entered as Exhibit 3, the testimony of the representative of the Philippine Air Lines (pp. 65-84), the testimony of the several Chinese witnesses and affidavits of record

establish to our satisfaction that respondent during the period here under consideration did receive remuneration for his unlawful activities by way of direct payments for obtaining passports and other documentation. He also realized a financial gain by way of commission on transportation sold to the aliens involved in effecting their travel to the United States. The charge stated in the warrant of arrest is sustained by the evidence of record.

Counsel urges that the hearing accorded respondent was unfair because hearsay evidence was admitted which was of such a character that respondent was completely denied the privilege of cross-examination.

This same issue arose recently in the case of *U. S. ex rel. Impastato v. O'Rourke,* 211 Fed. 2d .609, (CCA8, 1954), certiorari denied October 14, 1954. The court at p. 611 said, "In deportation hearings rules of evidence applicable in courts of law need not be followed. The admission of evidence which a court would regard as legally insufficient does not vitiate deportation proceedings". We find that the hearing accorded respondent meets the requirements set forth in Section 242(b) of the Immigration and Nationality Act of 1952. The appeal will be dismissed.

ORDER: It is ordered that the appeal be and the same is hereby dismissed.

Chairman

Appendix B

United States Court of Appeals for the Ninth Circuit

JEW TEN, also known as GEORGE K. JUE, also known as JUE GAR KING, also known as CHOW KA KING,
Petitioner,
vs.
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

No. 17,625
Sept. 8, 1962

Petition to Review an Order of the Immigration and Naturalization Service

Before: BARNES, and KOELSCH, Circuit Judges; PLUMMER, District Judge

BARNES, Circuit Judge:

This is a petition for judicial review of a final order of deportation entered against Jew Ten (hereinafter referred to as "petitioner") by the Immigration and Naturalization Service (hereinafter referred to as "respondent") pursuant to administrative proceedings under Section 242(b) of the Immigration and Nationality Act (8 U.S.C. § 1252(b)). The petition was timely filed. Service was properly made, and the deportation was stayed. This court has jurisdiction to review the order entered below under the provisions of Section 1105a of Title 8, United States Code, and Sections 1031-1042 of Title 5, United States Code.

The question here presented is whether respondent's order is erroneous as a matter of law.

The facts are not in dispute. They may be summarized as follows: Petitioner is an alien, a native and citizen of China, who was first lawfully admitted into the United States in 1919 as the lawful minor son of a domiciled merchant. He last entered the United States at the Port of Honolulu, the then Territory of Hawaii, on August 10, 1950, at which time he was admitted as a lawful returning permanent resident in possession of a valid re-entry permit.

On February 15, 1954, petitioner was convicted of a conspiracy to assist other aliens to enter the United States in violation of the law. The district court, pursuant to the provisions of § 241(b)(2) of the Immigration and Nationality Act (8 U.S.C. § 1251(b)(2)), recommended to the Attorney General that petitioner "be not deported." This resulted in the provision of Subsection (a)(4) of § 1251 being inapplicable (conviction of a crime involving moral turpitude).

Despite this judicial recommendation, and the resulting inapplicability of § 1251(a)(4), on April 3, 1954 respondent issued a warrant of arrest charging petitioner as being deportable under § 241(a)(13)[1] of the Immigration and Nationality Act of 1952.

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[1]This Subsection, 8 U.S.C. § 1251(a)(13), reads in pertinent part:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

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"(13) prior to or at the time of any entry, or at any time within five years after any entry shall have knowingly and

After an extensive hearing, the Special Inquiry Officer, in a decision dated July 18, 1955, sustained the charge and directed that petitioner be deported from the United States. This decision was affirmed by the Board of Immigration Appeals on December 20, 1955.

Petitioner does not set forth his specification of errors in conformity with the rules of this court. In his statement of facts, however, he says:

> "This petition for review was filed for the specific purpose of seeking a judicial determination as to whether the administrative decision is erroneous as a matter of law."

Thus, petitioner does not here assert that the record in no way supports respondent's decision; consequently, this court is not called upon to determine whether there is reasonable, substantial, or probative evidence in the record to support respondent's order.

The issue presented, in petitioner's words, is:

> "The Immigration and Naturalization Service erred in holding petitioner subject to deportation on the charge set forth in the warrant of arrest contrary to the recommendation of the District Court to the Attorney General that petitioner not be deported from the United States."

It is petitioner's contention that respondent is without jurisdiction or power to deport him because petitioner is entitled to the benefit of the district court's

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for gain encouraged, induced, assisted, abetted or aided any other alien to enter or try to enter the United States in violation of law."

recommendation that he not be deported. The district court's recommendation was founded upon § 241(b) of the Immigration and Nationality Act of 1952, which, prior to enactment of the Narcotics Control Act of 1956, read:

> "(b) The provisions of subsection (a)(4) respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States, or (2) if the court sentencing such alien for such crimes shall make, at the time of first imposing judgment or passing sentence, or within thirty days thereafter, a recommendation to the Attorney General that such alien not be deported, due notice having been given prior to making such recommendation to representatives of the interested State, the Service, and prosecution authorities, shall be granted an opportunity to make representations in the matter."

As one reads § 241(b), it seems fairly clear that the power of the sentencing court to recommend that a convicted alien not be deported is limited to those cases where an alien is convicted of an offense within the meaning of § 241(a)(4)[2] of the Act (8 U.S.C.

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[2]This section reads:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

• • • •

"(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective

§ 1251(a)(4)). But, as read and applied by some courts, § 241(b) was not free from ambiguity. The ambiguity in the scope of the application of § 241(b) resulted from first, the vague and uncertain language (here acknowledged to be so by respondent) of § 241(a)(4), and secondly, because for a number of years sentencing courts made judicial recommendations against deportation in cases where aliens were convicted of a violation of the narcotics laws[3]—even though aliens convicted of violations of narcotics laws were specifically deportable under § 242(a)(11).

With this brief background in mind, suffice it to say that Congress was not happy with the interpretation given § 241 by the courts. Consequently, by § 301(c) of the Narcotics Control Act of 1956 (70 Stat. 575) Congress amended § 241(b) by adding the following sentence:

"The provisions of this subsection shall not apply in the case of any alien who is charged with

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institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial."

[3]This is pointed up in footnote 5 in *Ex Parte Robles-Rubio*, N.D.Calif. 1954, 119 F.Supp. 610, at page 613, which reads:

"5. Since 1922, when violation of the Jones-Miller Act was first made a deportable offense, the courts have possessed the power to recommend against the deportation of an alien convicted of violating that narcotic statute. . . . And, when, in 1931, the violation of other narcotic statutes, including the Harrison Narcotics Act, was made a deportable offense, the power of the courts to recommend against deportation was made applicable to violators of these statutes. . . . Thus for 30 years prior to the passage of the Immigration and Nationality Act of 1952, the courts have been making recommendations against deportation in narcotic cases."

being deportable from the United States under subsection (a)(11) of this section."

The congressional intent of this amendment is clear from its history. In Conference Report No. 2546, the managers of the bill said:

"(3) It amended section 241(b) of that act by including additional language to state clearly that this provision does not permit judicial recommendation against deportation of an alien convicted of a narcotic offense. Clarification of this provision has been made desirable by reason of the decisions in United States ex rel. De Luca v. O'Rourke (213 F.3d 759) and Ex Parte Robles-Rubio (119 F.Supp. 610)." (2 U.S. Cong. News '56, p. 3321.)

The 1956 amendment to § 241(b) is the basis for petitioner's contention in the case at bar. This amendment, contends petitioner, directly or indirectly amends § 241(b) to mean that judicial recommendations can now be made in all those classes of deportability enumerated in § 241(a) except when the deportation is ordered under § 241(a)(11).

This contention, we believe, to be untenable. While the intent of Congress may be clearer in the statute's legislative history than it is in the language of the statute itself, we do not believe § 241(b) can be given the meaning contended for by petitioner. As we read § 241(b), taking cognizance of its history, it can only mean that the sentencing court is limited to making recommendations in § 241(a)(4) convictions.

This brings us to the case at bar. The district court here recommended that petitioner not be deported. Does this recommendation render respondent powerless—or without jurisdiction—to deport petitioner? For the reasons stated above, the answer would depend upon whether the case at bar was a proceeding to deport petitioner under § 241(a)(4). It was not. Hence, the district court's recommendation does not bar respondent from deporting petitioner, and respondent's final order of deportation must be affirmed.

Respondent did *not* charge petitioner as being deportable under § 241(a)(4); nor was § 241(a)(4) relied upon by respondent in the proceedings below. Respondent *did* charge and find a violation of § 241(a)(13).[1] In other words, respondent charged peti-

[1]The opinion of the Board of Immigration Appeals reads:

"The deportation of the [petitioner] is sought under Section 241(a)(13) . . . in that prior to or at the time of any entry, he knowingly and for gain encouraged, induced, assisted, abetted or aided any other alien to enter or try to enter the United States in violation of law. . . . Under [Section 241(b)] a nondeportable status created by judicial recommendation is limited to deportation charges brought under Section 241(a)(4) . . . unless said recommendation is preserved by . . . the saving clause of the 1952 Act. Since [the saving clause] is not applicable to the instant proceeding the judicial recommendation does not vitiate a charge laid under Section 241(a)(13). . . .

". . . As proof of the alleged unlawful acts the Government relies on a transcript developed during [petitioner's] trial on the indictment referred to above (Exs. 4, 5 and 114), the testimony of several Chinese aliens and some 182 exhibits consisting of visa files, affidavits and other evidentiary material.

"The extent of proof required to support the charges laid under Section 241(a)(13) is materially lessened by reason of [petitioner's] conviction in the United States District Court . . . for violation of Title 18 U.S.C. (Rev.) Section 271. . . ."

tioner as being deportable under § 241(a)(13) because he had committed acts proscribed under that section; not with being deportable for the reason that he had been convicted of a crime within the purview of § 241(a)(4). As pointed out in marginal note 4, *supra*, the only significance attached to petitioner's conviction in the proceedings below was that the conviction had made it easier for respondent to prove that petitioner did in fact commit acts proscribed by § 241 (a)(13). And, though it is not required, a reading of the record shows that respondent's decision was well founded in fact.

Affirmed.

(Endorsed) Opinion Filed Sept. 8, 1962.

Frank H. Schmid, Clerk.

The sole Conclusion of Law reached by the Special Inquiry Officer reads:

> "1. That under Section 241(a)(13) . . . the [petitioner] is subject to deportation on the ground that prior to or at the time of any entry, he shall have knowingly and for gain encouraged, induced, assisted, abetted or aided any other alien to enter or try to enter the United States in violation of law."

Appendix C

(Endorsed):
Filed (on return)
Feb 25 1954
C. W. Calbreath, Clerk.

(Endorsed):
Received ___ o'clock ___ M
Feb 16 1954
U.S. Marshal's Office
San Francisco, Calif.
Crim. No.

District Court of the United States
for
Northern District of California
Southern Division

No. 33654

UNITED STATES OF AMERICA
vs.
GEORGE K. JUE

JUDGMENT AND COMMITMENT

On this 15th day of February, 1954 came the attorney for the government and the defendant appeared in person and with counsel.

The defendant having plead not guilty and a verdict of guilty having been returned by the jury on February 5th, 1954, of a violation of *Title 18 U.S.C. (Rev.) Sec. 371*—(Conspiracy to defraud the United

States of and concerning its governmental function and right of administering the immigration laws of the United States) as charged in the indictment (single count); and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR and ONE (1) DAY and further, it is recommended to the Attorney General that the defendant be not deported.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ O. D. Hamlin,
United States District Judge.

Examined by:
/s/ James B. Schnake
Assistant U.S. Attorney
(Initialed) A.B.D.

The Court recommends commitment to an institution to be designated by U.S. Attorney General.

Judgment and Commitment filed this 16th day of February, 1954.

(Seal)

/s/ C. W. Calbreath,
Clerk.
/s/ A. B. Diepenbrock,
Deputy Clerk.

A True Copy. Certified this 16th day of February, 1954.

(Signed) C. W. Calbreath,
Clerk.

(By) Marguerite Ellis,
Deputy Clerk.

M.E.

(U.S. Marshal's Return on Reverse Side of Page)

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on February 15, 1954 to San Francisco County Jail.

Defendant delivered on February 19th, 1954 to Federal Prison Camp at Florence, Arizona, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

Frank O. Bell,
United States Marshal.
by: /s/ Charles J. Pomer,
Deputy.

Certified Copy

United States of America
Northern District of California—ss:

I, C. W. Calbreath, Clerk of the United States District Court in and for the Northern District of California, do hereby certify that the annexed and foregoing is a true and full copy of the original Judgment and Commitment dated February 15, 1954, in the case of United States of America v. George K. Jue,—Crim. Case No. 33654, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at San Francisco, California, this 24th day of November, A.D. 1954.

(Seal)

C. W. Calbreath,
Clerk.
By /s/ Marguerite Ellis,
Deputy Clerk.

M.E.

Appendix D

WARRANT

FOR ARREST OF ALIEN

United States of America
Department of Justice
Immigration and Naturalization Service
San Francisco, California

No. A-5524011, 1300-58600

To Immigration Officer E. T. Prather

Or to any officer in the service of the United States Immigration and Naturalization Service

WHEREAS, from evidence submitted to me, it appears that the alien JEW TEN aka GEORGE K JUE who entered this country at Honolulu, T.H. on P.A.L. the 10th day of August, 1950 has been found in the United States in violation of the immigration laws thereof, and subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

Section 241 (a)(13) of the Immigration and Nationality Act, in that, prior to entry he has knowingly and for gain, encouraged, induced, assisted, abetted or aided any other alien to enter or to try to enter the United States in violation of law.

Section 241(a)(13) of the Immigration and Nationality Act, in that, at the time of entry he has knowingly and for gain, encouraged, induced, assisted,

abetted or aided any other alien to enter or to try to enter the United States in violation of law.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1954."

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 15th day of February, 1954.

(Seal) /s/ Bruce G. Barber

Bruce G. Barber, District Director
San Francisco District

Office at San Francisco, Calif.
Date Feb 15 1954

WARRANT FOR ARREST OF
JEW TEN AKA GEORGE K. JUE

Served by me at San Francisco, Calif., on Feb. 15, 1954 at 12:55 p.m. Alien was then informed as to cause of arrest, the conditions of release, advised as to right of counsel and furnished with a copy of this warrant.

E. T. Prather, Investigator.